

Supreme Court of the United States

OCTOBER TERM, 1972

No. 71-229

UNITED STATES OF AMERICA,

Petitioner,

—v.—

ANTONIO DIONISIO

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT
OF APPEALS FOR THE SEVENTH CIRCUIT

INDEX

	Page
Relevant docket entries	1
Government petition for court order directing Antonio Dionisio to furnish voice exemplars before and to the Special February 1971 Grand Jury	4
Court order directing Dionisio to furnish the exemplars	6
Relevant portions of the transcripts of the proceedings before the grand jury and the district court	8
Order allowing certiorari ¹	19

¹ The opinion of the court of appeals, the denial of the Government's petition for rehearing, the district court's memorandum on the request for exemplars, and the order of judgment and commitment holding Dionisio in contempt were printed at pp. 12-26 of the Appendix to the petition for a writ of certiorari.

RELEVANT DOCKET ENTRIES

DATE	PROCEEDINGS
Feb. 1, 1971	Special Grand Jury for February 1971 as indicated on the jury venire for February 1971 is drawn and empaneled before Chief Judge Edwin A. Robson. Eldred Du Sols and Margaret G. Floyd sworn as Foreman and Deputy Foreman respectively and Frank L. Lude sworn as Marshall in charge—Robson, J.
Feb. 18, 1971	Filed Government's Petition for court order directing Antonio Dionisio to furnish voice exemplars before and to the special Feb. 1971 grand jury.
Feb. 18, 1971	Filed Memorandum in opposition to petition for court order directing witnesses to furnish exemplars before Feb. 1971 Grand Jury.
Feb. 18, 1971	Order Government's petition for court order requiring respondent to furnish voice exemplars entered and set for disposition on Feb. 19, 1971 at 10:30 A.M., with respondent to respond by 2:00 P.M. this date—Robson, J.
Feb. 18, 1971	Filed Answer to Government's petition for court order directing Antonio Dionisio to furnish voice exemplars before and to the special Feb. 1971 grand jury.
Feb. 18, 1971	Filed Memorandum of law in support of Antonio Dionisio's answer to Government's petition for court order directing the witness to furnish voice exemplars before and to the special Feb. 1971 grand jury.
Feb. 19, 1971	Enter order on Government's petition directing Antonio Dionisio to furnish voice exemplars before and to the Special Feb. 1971 grand jury—DRAFT.

DATE	PROCEEDINGS
Feb. 19, 1971	Filed Memorandum and Order on Government's Petition to compel voice exemplars—Robson, J. (copy)
Feb. 22, 1971	Filed Petition to set bail.
Feb. 22, 1971	Filed Affidavit of Arthur H. Zimmerman, counsel for A. Dionisio
Feb. 22, 1971	Enter order holding Antonio Dionisio in direct and continuing contempt of Court for failure to obey order of Feb. 19, 1971 heretofore entered herein and order defendant hereby committed to custody of the U.S. Marshal until respondent shall obey said order or until the expiration of eighteen months. Order petition to set bail hereby denied—DRAFT—Robson, J.
Feb. 23, 1971	Issued 2 certified copies order to U.S. Marshal
Feb. 23, 1971	Filed Notice of Appeal of Antonio Dionisio
Feb. 24, 1971	Certified and transmitted Record on Appeal to U.S.C.A.
Feb. 26, 1971	Transmitted and certified to U.S.C.A. Documents filed and orders entered 2-18 and 2-19, 1971 as part of the Record on Appeal.
Mar. 1, 1971	Filed Appeal Bond—\$2,500.00, Surety—Antonio Dionisio
Mar. 1, 1971	Filed Clerk's File Copy of Transcript of Proceedings had before Judge Austin on Feb. 16, 1971, filed by official court reporter (Re: Jack O'Brien and Robert Plummer).
Mar. 1, 1971	Filed Clerk's File Copy of Transcript of Proceedings had before Judge Robson on Feb. 19 and 22, 1971, filed by official court reporter (Re: Albert Dini, et al).

DATE	PROCEEDINGS
Mar. 10, 1971	Enter order directing Clerk to certify to U.S. Court of Appeals, as part of record on appeal, transcripts as set forth herein—DRAFT—Robson, J. (A. Dionisio and Charles Bishop Smith).
Mar. 11, 1971	Certified and transmitted 4 volumes of transcript to U.S.C. as part of the record on appeal.
Mar. 12, 1971	Filed Clerk's File Copy of Transcript of Proceedings had before Judge Robson on Feb. 23, 1971, filed by official court reporter (Re: Albert Dini, et al) (1 vol.)
Mar. 16, 1971	Certified and transmitted 1 volume of transcript to U.S.C.A. as part of the record on appeal.
Nov. 16, 1971	Records returned from the U.S.C. Appeals.
July 13, 1972	Filed request from the SUPREME COURT OF THE UNITED STATES REQUESTING 71-G-J 466 for certiorari.

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

**IN RE: ANTONIO DIONISIO
A WITNESS BEFORE THE)
SPECIAL FEBRUARY 1971) NO. 71 GJ 466
GRAND JURY)**

**GOVERNMENT'S PETITION FOR COURT ORDER DIRECTING
ANTONIO DIONISIO TO FURNISH VOICE EXEMPLARS
BEFORE AND TO THE SPECIAL FEBRUARY 1971 GRAND JURY**

Now comes the petitioner, **WILLIAM J. BAUER**, United States Attorney for the Northern District of Illinois, and represents to this Honorable Court as follows:

1. The **SPECIAL FEBRUARY 1971 GRAND JURY** for the Northern District of Illinois is now conducting an investigation of alleged illegal activities in said District: said investigation involves possible violations of federal criminal statutes. Antonio Dionisio has been subpoenaed by said Special Grand Jury and fully advised that he is a potential defendant in its investigation.
2. It is essential and necessary to the aforesaid Special Grand Jury investigation that Antonio Dionisio furnish before and to the said Special Grand Jury, or to any duly appointed agent of the said Special Grand Jury, exemplars of his voice as transmitted over the telephone. Such exemplars will be used solely as a standard of comparison in order to determine whether or not the witness is the person whose voice was intercepted pursuant to this Court's orders 70 C 2510 and 70 C 2601.
3. Respondent, Antonio Dionisio, appeared pursuant to subpoena before the **SPECIAL FEBRUARY 1971 GRAND JURY** on February 17, 1971.
4. Respondent, **ANTONIO DIONISIO**, was then and there given a transcript marked **SPECIAL GRAND JURY EXHIBIT 13**. The exhibit gives names of persons, numbers of races and horses, and other information which

the foreman of the said SPECIAL GRAND JURY directed the said respondent to read while talking into a telephone which was connected to a recording device. Respondent refused, to read the transcript asserting his constitutional privilege against self-incrimination.

5. Petitioner contends that mere voice exemplars are identifying physical characteristics outside the protection of the Fifth Amendment. Petitioner further contends that respondent has no constitutional privilege whatsoever to refuse to furnish exemplars of his voice, as demanded by the Special Grand Jury. *Gilbert v. California*, 388 U.S. 263, 265-267 (1967); *Schmerber v. California*, 384 U.S. 757, 761 (Fn. 5), 764 (1966); *United States v. Wade*, 388 U.S. 218, 222-223 (1967); *Higgins v. Wainwright*, 424 F. 2nd 177 (5th Cir. 1970); *Schmidt v. United States*, 380 F. 2nd 22 (5th Cir. 1967) cert. den., 390 U.S. 908.

Wherefore, petitioner prays that this Honorable Court issue its order directing respondent, ANTONIO DIONISIO, to furnish, before and to the SPECIAL FEBRUARY 1971 GRAND JURY of the United States District Court for the Northern District of Illinois, or to any duly appointed agent of said SPECIAL GRAND JURY, such exemplars of respondent's voice as the said Special Grand Jury deems necessary.

Respectfully submitted,

WILLIAM J. BAUER
United States Attorney

By /s/ Lee Allen Hawke
LEE ALLEN HAWKE
Special Attorney
Department of Justice

Special Attorney
Department of Justice

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

IN RE: ANTONIO DIONISIO)
A WITNESS BEFORE THE) NO. 71 GJ 466
SPECIAL FEBRUARY 1971)
GRAND JURY

ORDER

On petition of WILLIAM J. BAUER, United States Attorney for the Northern District of Illinois, the Court having read and considered said petition and having heard the argument of counsel, finds:

1. The SPECIAL FEBRUARY 1971 GRAND JURY for the Northern District of Illinois is now conducting an investigation involving possible violations of federal criminal statutes.

2. Respondent, ANTONIO DIONISIO, appeared before said Special Grand Jury on February 17, 1971. The Foreman directed respondent to furnish voice exemplars, as more fully set forth in the petition of the United States Attorney. The respondent refused to furnish said exemplars, asserting his Constitutional privilege against self-incrimination. Said privilege was improperly asserted by respondent. Respondent has no Constitutional privilege to refuse to furnish said voice exemplars demanded by the Special Grand Jury.

IT IS THEREFORE ORDERED that respondent, ANTONIO DIONISIO, furnish before and to the SPECIAL FEBRUARY 1971 GRAND JURY of the United States District Court for the Northern District of Illinois, or to any duly appointed agent of said Special Grand Jury, such exemplars of respondent's voice as the said Special Grand Jury deems necessary.

ENTER:

/s/ Edwin A. Robson
EDWIN A. ROBSON
Chief Judge
United States District Court
for the Northern District
of Illinois

Dated at Chicago, Illinois, this 19 day of February 1971.

LAH

IN RE: GRAND JURY) GRAND JURY
INVESTIGATION) NO. 71-GJ-466

BEFORE THE FEDERAL GRAND JURY

(Special February, 1971 Grand Jury)

February 17, 1971

10:00 o'clock a.m.

PRESENT:

THE HONORABLE WILLIAM J. BAUER, United States Attorney, by MR. LEE A. HAWKE, MR. HERBERT BEIGEL, Chicago Strike Force, Department of Justice, Chicago, Illinois.

(THE GRAND JURY, having convened at 10:00 o'clock a.m. on February 17, 1971, pursuant to adjournment, met in closed session and the following proceedings were had herein:)

ANTONIO DIONISIO

having been first duly sworn by the Foreman to testify the truth, the whole truth and nothing but the truth, was examined and testified as follows:

EXAMINATION

BY MR. BEIGEL:

Q Will you please state your name and spell your last name for the Grand Jury?

A Antonio Dionisio, D-i-o-n-i-s-i-o.

Q And where do you reside?

A 2702 North Ashland.

Q Now, Mr. Dionisio, I would like to inform you that this is a Federal Grand Jury which is investigating possible violations of federal criminal law, more specifically Title 18 of the United States Code.

I would also like to advise you that you are a possible defendant in this investigation by the Grand Jury. Do you understand that?

A Yes.

Q I would also like to advise you that you have a right to have counsel outside this Grand Jury with whom you can consult at any time you desire?

Do you understand that?

A Yes.

Q Do you have an attorney with you?

A Yes.

Q What is his name?

A Art Zimmerman.

Q Is he outside this Grand Jury room?

A Yes.

Q I would also like to advise you that anything you may answer to my questions may be used against you in a later court proceeding. Do you understand that?

A Yes.

Q And that you can refuse to answer any question which you think or believe would tend to incriminate you. Do you understand that?

A Yes.

MR. BEIGEL: Will you mark this as Grand Jury Exhibit 13?

(Said document was marked as Grand Jury Exhibit 13 and dated and initialed by

BY MR. BEIGEL:

Q Mr. Dionisio, I would like to hand you Grand Jury Exhibit No. 13 and ask you to look at it. Have you finished examining it?

Mr. Dionisio, if the Foreman of this Grand Jury instructs you to read Grand Jury Exhibit No. 13 into a telephone, in an office on this floor, in the presence of a special agent of the Grand Jury, and have your voice recorded, would you abide by that request?

A I refuse to give any voice exemplar based on the rights guaranteed me under the Fourth and Fifth Amendments.

Q The Foreman of the Grand Jury is going to instruct you to give an exemplar of your voice, and if you wish to refuse to do that, please state such to the Foreman.

THE FOREMAN: Mr. Dionisio, I would like to request you to read Grand Jury Exhibit No. 13 in the presence of a special agent of the Grand Jury, over the telephone, for the purposes of having it recorded on a recording device.

Will you do so?

BY THE WITNESS:

A I refuse to give a voice exemplar based on the rights guaranteed me under the Fourth and Fifth Amendments.

BY MR. BEIGEL:

Q Mr. Dionisio, since you have refused to give a voice exemplar, we are continuing your subpoena until 10:00 a.m. tomorrow morning, at which time you are to appear in Judge Robson's court, on the 25th floor of this building. At that time the Government will present a petition to the Court asking the Court to order you to give a voice exemplar.

You may also bring with you your attorney tomorrow morning at ten o'clock. Do you understand?

A Yes.

MR. BEIGEL: You are excused.

(Witness excused.)

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

No. 71 GJ 466

IN RE ALBERT DINI, ET AL., WITNESSES BEFORE THE
SPECIAL FEBRUARY 1971 GRAND JURY

TRANSCRIPT OF PROCEEDINGS

had in the above-entitled cause before the HONORABLE
EDWIN A. ROBSON, Chief Judge of said Court, in his
courtroom in the United States Courthouse, Chicago, Ill-
inois, on Friday, February 19, 1971, at the hour of 10:30
o'clock a.m.

PRESENT:

HON. WILLIAM J. BAUER, United States Attorney,
by MR. LEE ALLEN HAWKE, Assistant United States
Attorney,

appeared for the government;

MR. THOMAS L. ROBINSON,

appeared for respondent Jackson;

MR. MICHAEL NASH,

appeared for respondent Harrison;

MR. ANTHONY A. BUCCI,

appeared for respondent Bouris;

MR. FRANK G. WHALEN,

appeared for respondents Charles Bishop Smith
and Halley James Smith;

MR. BERNARD BRODY,

appeared for respondents Parrillo, Leavitt and
Grafner;

MR. JOSEPH A. ETTINGER,

appeared for respondents Turner, Pieroni, Mar-
ing, Venturelli, and Beck;

MR. WILLIAM J. STEVENS,
appeared for respondent Helmer;

MR. JOHN J. COGAN,
appeared for respondent Imparato;

MR. ARTHUR ZIMMERMAN,
appeared for respondent Dionisio;

MR. HARRY J. FREEMAN and MR JAMES GUCH,
appeared for respondents Box and Dyer;

MR. BARRY GOODMAN,
appeared for respondent Martino;

MR. NEIL BROWN,
appeared for respondent Cazado;

MR. SHERMAN MAGIDSON,
appeared for respondent Rose;

MR ETTINGER: Your Honor, I also represent Mr. Maring, and the comments I made with regard to Mr. Turner, I would hope would be incorporated in the record.

THE COURT: All right, they may be incorporated in and made a part of the record as your objections and contentions in connection with this witness.

The Court will enter an order requiring this witness to give voice exemplars. If he fails so to do, he may be held in contempt of court for failure to do so and imprisoned for a maximum of 18 months for contempt or until he purges himself of that contempt.

MR. ETTINGER: Under compulsion of the Court, we will comply.

THE CLERK: In re: *Antonio Dionisio*.

THE COURT: And this will be on Monday morning also?

MR. ETTINGER: Yes, your Honor. I stipulate that they will all be on Monday morning.

MR. ZIMMERMAN: Judge, for the record my name is Arthur Zimmerman and along with Mr. Ettinger, we represent Antonio Dionisio.

At this time we would like to take the opportunity to adopt all pleadings and objections raised by other coun-

sel on behalf of their witnesses, some of which we have not seen, of course; and obviously we take objection to your Honor's ruling.

THE COURT: All right. It may be incorporated in and made a part of the record of those heretofore made by other counsel and by Mr. Ettinger in behalf of this witness. You are also appearing on his behalf?

MR. ETTINGER: Yes, your Honor.

THE COURT: What is your name for the record?

MR. ZIMMERMAN: Zimmerman, your Honor, Arthur Zimmerman.

MR. HAWKE: Since we have Mr. Ettinger involved in this, I was wondering about time schedules.

MR. ZIMMERMAN: There won't be any problem with the time schedule in this one.

THE COURT: Do you want to appear today then?

MR. ZIMMERMAN: Yes.

MR. ETTINGER: No, Monday, because I will be here for all of them. So it will be 9-00 Monday.

THE COURT: The Court will enter an order here requiring this witness to give voice exemplars before the Grand Jury. If he fails so to do, he will be held in contempt and be sentenced and incarcerated for a maximum of 18 months or until he purges himself of that contempt.

All right, call the next one.

THE CLERK: In re: James J. Venturelli.

MR. ETTINGER: Good morning, your Honor.

THE COURT: You may incorporate all objections and arguments made on behalf of Mr. Turner; and the Court will enter an order requiring this witness to give voice exemplars at a time that is agreed to by the United States Attorney and your counsel. If you fail so to do, you may be held in contempt of court and imprisoned up to 18 months or until you purge yourself of contempt by giving voice exemplars.

MR. ETTINGER: Thank you, very much, your Honor.

THE COURT: All right, thank you.

THE CLERK: In re: George Bouris.

MR. BUCCI: If your Honor please, I had appeared earlier in this proceeding and asked to be heard. However, I wasn't aware that your Honor had already fixed his judgment, so that any argument I may make might be academic at this point. I simply would like to lay on the record in that I did not file a memorandum, that the objection by this witness, "potential defendant," is propelled by the Fourth and Fifth Amendments to the U. S. Constitution. I would like to join my brother

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TRANSCRIPT OF PROCEEDINGS

had in the above-entitled cause before the HONORABLE EDWIN A. ROBSON, Chief Judge of said Court, in his courtroom in the United States Courthouse, Chicago, Illinois, on Monday, February 22, 1971, at the hour of 10:00 o'clock.

PRESENT:

HON. WILLIAM J. BAUER, United States Attorney,
by MR. L. A. HAWKE and MR. H. BEIGEL

appeared for the United States of America;

MR. JOSEPH A. ETTINGER and MR. ARTHUR H.
ZIMMERMAN

appeared for respondents Turner, Dionisio, et al.,
the only reason they are being brought forth—

THE COURT: It says they might be.

MR. HAWKE: Potential defendants.

MR. ETTINGER: Your Honor, the second point is that this specific statute, Section 6002, says that anyone who asserts the privilege of self-incrimination and is then ordered to testify, must be granted immunity.

THE COURT: That was all argued by several counsel, Mr. Ettinger. That motion will be denied.

Are there any other motions?

MR. ETTINGER: Yes, your Honor. At this time I would advise the Court that Mr. Antonio Dionisio will refuse to give a voice exemplar today.

THE COURT: All right. If he does refuse, then I will pass on it at that time.

MR. ETTINGER: Well, your Honor, he can make his refusal before the open court at this time, Judge. He is in court and will make his refusal at this time.

THE COURT: Is he present in open court?

MR. ETTINGER: Yes, he is, your Honor.

THE COURT: All right. He may step forward.

(Brief interruption.)

THE COURT: You may proceed.

MR. ETTINGER: Your Honor, in behalf of the witness Antonio Dionisio, we would at this time advise the Court that he will refuse to furnish the voice exemplar pursuant to the order issued by you on Friday of this past week. He does so based upon his privileges against self-incrimination.

MR. HAWKE: Your Honor, the government will prepare a petition, if the Court so directs us to, on the contempt.

THE COURT: All right. Prepare it and present it at 2:00 o'clock this afternoon. Is that agreeable?

MR. HAWKE: Yes.

MR. ETTINGER: Your Honor, will he remain at liberty at —

THE COURT: No, in that he is refusing he will be taken into custody at the present time. I will enter the order.

MR. ETTINGER: Your Honor, I would move at this time for the setting of a bond pursuant to the statute.

THE COURT: No, he is being held in contempt of court, and bond will be denied.

MR. ETTINGER: Your Honor, the statute specifically provides provisions for bond. This statute, the statute under which he has been brought before the Court, specifically provides for the placing of a bond at the time that a witness becomes recalcitrant. That is under Title 3 of the Act.

THE COURT: Well, I will allow him to remain at large until 2:00. I will take a look at the section of the Act.

MR. ETTINGER: Thank you very much, your Honor.

THE COURT: Until 2:00 o'clock.

MR. ETTINGER: That would be Section 1826.

THE COURT: All right, thank you.

MR. HAWKE: Thank you, your Honor.

MR. ETTINGER: Thank you.

(Which were all of the proceedings had in the above-entitled cause on the day and date aforesaid.)

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

No. 71 GJ 466

IN RE ALBERT DINI, ET AL., WITNESSES BEFORE THE
SPECIAL FEBRUARY 1971 GRAND JURY

TRANSCRIPT OF PROCEEDINGS

had in the above-entitled cause before the Honorable
EDWIN A. ROBSON, Chief Judge of said Court, in his
courtroom in the United States Courthouse, Chicago,
Illinois, on Monday, February 22, 1971, at the hour of
2:00 o'clock p.m.

PRESENT:

HON. WILLIAM J. BAUER, United States Attorney,
by MR. L. A. HAWKE and MR. H. BEIGEL

appeared for the United States of America;

MR. JOSEPH A. ETTINGER and MR. ARTHUR H.
ZIMMERMAN

appeared for respondents Turner, Dionisio, et al.
order as it was signed yesterday.

THE COURT: You had a right to a copy of the
order.

MR. ETTINGER: I was never furnished with one.
I asked the Clerk if a supplemental had been filed and
he said no, the only one that was filed was the one that
had been furnished by the Government's attorneys. I
looked at a copy that was submitted for another of
the defendants. I did not have one for Dionisio. I
thought that that was the same order that had been
entered for this defendant.

THE COURT: All right. I want to make that a part
of the record here, to clearly show it.

Now, we have a petition to set bail. I see that the motion is signed by Arthur H. Zimmerman.

MR. ZIMMERMAN: That is correct, your Honor.

THE COURT: Aren't you counsel also in this, Mr. Ettinger?

MR. ETTINGER: Co-counsel, your Honor.

MR. ZIMMERMAN: We are co-counsel.

THE COURT: All right, but it is just signed by Mr. Zimmerman.

We have a judgment of commitment order. I changed the last paragraph.

It is therefore ordered that respondent Antonio Dionisio be and he is hereby committed to the custody of the United States Marshal for the Northern District of Illinois, until such time as respondent shall obey said order or until the expiration of 18 months.

That will be the order that the Court will enter at this time.

Now, we have your petition for bail here, to set bail. For the purpose of the record, I want to state that last Friday when this came up you asked for a continuance until this morning so that the respondent here could appear at the same time other witnesses of yours were appearing to give exemplars of his voice. This morning you came in on a motion in which you stated that he refuses to give those exemplars.

Now, I ask whether or not that was to forestall the entry of an order, and if you had knowledge that he did not intend to give exemplars of his voice.

MR. ZIMMERMAN: If I might just respond briefly.

THE COURT: I am asking counsel here who made the representation.

MR. ETTINGER: Your Honor, I had a conversation with him along those lines. I brought everybody here at 9:00 o'clock this morning, your Honor. They all

SUPREME COURT OF THE UNITED STATES

No. 71-229

UNITED STATES, *Petitioner*

v.

ANTONIO DIONISIO

ORDER ALLOWING CERTIORARI. Filed May 30, 1972.

The petition herein for a writ of certiorari to the United States Court of Appeals for the Seventh Circuit is granted, and is to be argued with No. 71-850.